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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/19/07  
 LAST UPDATED 03/16/07    HB 937/aHHGAC

SPONSOR Powdrell-Culbert

SHORT TITLE Medical Record Copying Fee Limits    SB \_\_\_\_\_

ANALYST Hanika Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$.1 see narrative		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)  
 Attorney General's Office (AGO)  
 Health Policy Commission (HPC)

### SUMMARY

#### Synopsis of HHGAC Amendment

The House Health & Government Affairs Committee Amendment clarifies the retrieval of records to include electronic retrieval; provides fees for such retrieval and search of records older than five years to not exceed \$25.00; and, removes the emergency clause from the bill thereby making the effective date of the Act July 1, 2007.

#### Synopsis of Original Bill

House Bill 937 amends Section 14-6-3 NMSA 1978 of the Records Act by removing references to applicants for disability benefits to make the statute apply to all patients and former patients and/or their representatives; and, implements a new statutory fee structure for the cost of copies which can only be changed by the DOH every three years in accordance with the percent increase or decrease in the medical component of the consumer price index.

Current law provides that within thirty days of receiving written request from a patient or former patient or authorized representative of such patient or former patient, a health care provider shall furnish the requestor a copy of that patient's medical record.

The bill provides a new fee schedule for copying medical records not to exceed:

- For search and retrieval, twenty dollars (\$20.00);
- For the first fifteen copies, one dollar (\$1.00) per page;
- For sixteen to forty copies, forty cents (\$.40) per page;
- For forty-one copies or more, thirty cents (\$.30) per page;
- For copies from microfilm, twenty dollars (\$20.00) for search and retrieval and one dollar fifty cents (\$1.50) per page;
- For mail delivery of the copy or copies, actual postage cost; and
- For records such as radiology films, models, photographs or fetal monitoring strips, the full cost of reproduction.

HB937 declares an emergency, making the provisions effective April 1, 2007.

### **FISCAL IMPLICATIONS**

The bill establishes a fixed fee scale for health care providers and patients or former patients requesting copies of medical records such as radiology films, models, photographs or fetal monitoring strips, or microfilm. The scope of which will include an initial administrative fee of \$20.00 for search and retrieval plus a subsequent fee scale based upon quantity or type of medical records requested.

DOH comments that because the bill enacts a new fee schedule that can only be modified by statute once every three years, it will be more difficult for DOH to modify the fees charged. If DOH wanted to modify copying fees for persons other than those seeking disability benefits, it could also dictate those fees by regulation, rather than by statute. Establishment of these fees may not ensure that they cover a provider's actual costs.

### **SIGNIFICANT ISSUES**

The AGO states that current law only requires a health care provider to furnish records to patients or former patients who are applying for benefits based on social security disability or who are appealing a denial of such benefits. This bill will expand that requirement to apply to records requests from all patients and former patients.

Current state law also allows the DOH to establish fees for copies or for service in obtaining records. This bill will enact those fees into state law, and allow the Department to adjust them in accordance with increases or decreases in the medical component of the consumer price index.

### **PERFORMANCE IMPLICATIONS**

HIPPA permits a covered entity to impose reasonable, cost-based fees. The fee may include only the cost of copying (including supplies and labor) and postage, if the patient requests that the copy be mailed. If the patient has agreed to receive a summary or explanation of his or her protected health information, the covered entity may also charge a fee for preparation of the summary or explanation. **The fee may not include costs associated with searching for and retrieving the requested information.** See 45 CFR 164.524. HIPAA preempts state laws that are contrary to it.

**ADMINISTRATIVE IMPLICATIONS**

DOH will be administratively responsible to ensure the provisions of the bill are enacted.

**TECHNICAL ISSUES**

DOH notes that neither the bill nor current State statute identifies how indigent persons who cannot afford these fees may obtain copies of their medical records from health care providers. Under applicable Federal regulations, individuals generally have a right to inspect and obtain a copy of protected health information about themselves, although there doesn't appear to be a guideline for how indigent requests should be handled. (45 CFR 164.524)

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Section 14-6-3 NMSA 1978 of the Records Act will not be amended to remove references to applicants for disability benefits to make the statute apply to all; and, will fail to implement a new statutory fee structure in accordance with the consumer price index.

**AMENDMENTS**

Page 2, line 4, insert “as established by the department of health” between “A fee...” and the word “...charged” on line 4; deleting language within line 1 beginning with “A fee...” until line 4 “...records.”

Page 2, line 21, replace the word “full” with the word “actual”.

Page 2, delete lines 6, 7 and 8 within (1); and, renumber accordingly.

AHO/mt